
UTAH LABOR COMMISSION

RUTH STOKES,

Petitioner,

vs.

IHC HOME CARE,

Respondent.

ORDER OF REMAND

Case No. 06-0298

Ruth Stokes asks the Utah Labor Commission to review Administrative Law Judge Lima's denial of Ruth Stokes' claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. Stokes claims workers' compensation benefits from IHC Home Care ("IHC") for a work-related right elbow injury that occurred on August 10, 2005, and repetitive work-related trauma to the left elbow from August 10, 2005, through January 19, 2006. Due to conflict in the medical opinions, Judge Lima referred the medical aspects of the case to a medical panel. After reviewing the panel's opinion, Judge Lima denied benefits.

In her motion for review, Ms. Stokes argues that Judge Lima failed to properly phrase the medical issues in her prepared questions to the medical panel, that the interim findings of fact that were provided to the panel were also insufficient, and there should be a new panel appointed due to a conflict of interest with one of the members.

FINDINGS OF FACT

The Commission adopts Judge Lima's findings of facts. The facts relevant to the motion for review are as follows:

Ms. Stokes worked for IHC as a nurse's assistant. As early as 2002, Ms. Stokes received treatment for epicondylitis in both the right and left elbows, with more intensive treatment on the right, including a right lateral epicondylectomy in February 2005. On August 10, 2005, while attempting to transfer a patient, she felt a sharp pain in her right elbow area and had immediate swelling. However, because she was leaving for vacation the next day, she self-treated the subsequent swelling and pain. Finally, in November 2005, due to continual right elbow pain, Ms. Stokes went to Workmed and was diagnosed with medial epicondylitis caused by her work. An

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MRI later revealed a partial tendon tear of the right medial epicondyles.

In the meantime, due to her right elbow pain and the restrictions later placed on her right arm, Ms. Stokes had to rely on her left arm when she worked. Ms. Stokes alleges that this overuse of her left arm from August 10, 2005, through January 19, 2006, caused repetitive use trauma. By March 2006, Ms. Stokes also had restrictions placed on her left arm.

On June 21, 2006, Dr. Fotheringham, IHC's medical consultant, stated that prior to August 2005, Ms. Stokes had pre-existing right and left elbow conditions, including the right tendon tear. His assessment was that the accident on August 10, 2005, caused only a temporary aggravation of Ms. Stokes' right elbow condition that returned to baseline (i.e., medical stability) by October 2005.¹ Therefore, it was his opinion that it was Ms. Stokes' preexisting conditions—not the work-related injuries—that were the cause of her current conditions.

Due to conflicts in the medical opinions, Judge Lima appointed a medical panel. In her referral letter to the medical panel, Judge Lima summarized the issues as follows:

A medical dispute has occurred regarding whether Ms. Stokes' medical condition of her right upper extremity **was caused** by her industrial accident on August 10, 2005, and whether her medical condition of her left upper extremity **was due to** cumulative trauma from August 10, 2005, to January 19, 2006. (Emphasis added.)

The first question then directed to the panel was "Is there a medically demonstrable causal connection between Ms. Stokes' medical conditions and the industrial accident on August 10, 2005, and cumulative trauma from August 10, 2005, to January 19, 2006." The medical panel responded:

. . . It is thus the Medical Panel's opinion that there is no easily identifiable causal connection, within reasonable probability, between Ms. Stokes' medical conditions and the industrial accident[s] . . . While it is certainly possible that Ms. Stokes could have sustained an aggravation or exacerbation of right elbow symptoms, her condition appears pre-existing and well documented . . .

The fourth question asked whether medical care received since August 2005 had been necessitated by her industrial accident and/or cumulative trauma. The panel replied:

The Medical Panel has opined that Ms. Stokes has a pre-existing condition with multiple aggravations and/or exacerbations to both upper extremities. . . It is the

¹ At the hearing, IHC recognized that the August 10, 2005, accident caused a temporary aggravation of Ms. Stokes preexisting right arm condition and that the relevant question for the medical panel would be whether the condition returned to baseline by October 2005, as Dr. Fotheringham opined, or later.

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Medical Panel's opinion that the care Ms. Stokes did receive was appropriate although, as stated, the panel is hard pressed to define this care as being solely in association with either [injury]. . . .

The final question posed was "What future medical treatments including surgery and/or medication will be reasonably required to treat Ms. Stokes problems resulting from the industrial injury?" The panel responded:

The Medical Panel's confusion, if you will, is centered about our above stated concerns as to Ms. Stokes' obvious pre-existent phenomena to both upper extremities. . . . We also feel there is documentation of "cumulative trauma" prior to the August 10, 2005 date and are therefore hesitant to ascribe any further treatments for a possible "cumulative trauma" solely supposedly resulting from the assumed industrial injury of 08-10-05. (Emphasis in original.)

The panel also noted multiple times that there were "no documented medical contacts for three months following the 08/10/05 event" that may have assisted in determining the extent of Ms. Stokes' right elbow dysfunction.

DISCUSSION AND CONCLUSION OF LAW

In her motion for review, Ms. Stokes argues that Judge Lima's interim findings of fact submitted to the medical panel was insufficient and that the questions formulated did not appropriately address the issues of medical causation involved. The Commission first reviews Ms. Stokes' claims regarding the findings of fact and does not find error in Judge Lima's findings of fact. Ms. Stokes argues that her description at the hearing, about the progression off her right elbow pain during the three months following the initial injury, would have assisted the panel in determining medical causation. She points to portions of the panel's opinion where it stated that any medical documentation during the three months after the injury would have been helpful to the panel in determining the extent of her arm injury. However, her testimony would not have satisfied the panel's request for "medical contact or documentation" of her status because there was no medical contact or documentation during that time. Ms. Stokes' subjective complaints would also have easily been obtained from the medical panel during the physical examination if the panel thought it would be helpful.

The second claim made is that Judge Lima's questions did not properly identify the medical issues to be resolved. It is established case law in Utah that a preexisting condition, when aggravated or lighted up by a work accident, is compensable. See Allen v. Industrial Commission, 729 P.2d 15, 25 (Utah 1986). A review of the panel's opinion shows it struggled with finding that either elbow conditions were medically caused by the work injuries since there were pre-existing conditions. The panel appeared to be under the misapprehension that to find causation, and to sanction medical treatment for the injuries, the work accidents had to "solely" cause the conditions.

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The panel also mentioned that it was likely the August 10th incident could have **aggravated** those conditions and, later, that there were such aggravations. After reviewing the panel's report, the Commission is convinced that there was some confusion in the panel's analysis as to whether medical causation could be demonstrated if there was a preexisting condition. The Commission finds that further clarification of the panel's decision with respect to aggravation to the preexisting conditions is necessary.

The Commission notes Ms. Stokes' argument that there was a conflict of interest in the appointment of one of the panel members. The Commission has reviewed the panel's detailed report and does not find any evidence of bias and, therefore, does not find appointment of a new panel necessary.

The Commission concludes that the matter should be remanded to Judge Lima so that she may clarify the following questions with the medical panel and take other actions as deemed necessary: (1) whether the accident on August 10, 2005, caused **or aggravated** Ms. Stokes' right elbow condition; (2) whether cumulative trauma from August 10, 2005, through January 19, 2006, caused **or aggravated** Ms. Stokes' left elbow condition; (3) whether, if there was an aggravation, either condition returned to its baseline level, and when; and (4) whether future medical care could be anticipated for treatment of either injuries.

ORDER

The Commission hereby remands this matter to Judge Lima for further proceedings as outlined above. It is so ordered.

Dated this 30th day of September, 2008.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

